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1948

File No. O. Succession 48

Legal **DEPARTMENT**

A **BRANCH**

K.S.R. 216

Subject:—

O. Succession

Opinions under the

Indian Succession

Act; 1925.

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File No. O Succession 48

Std. Sectt. Slip 24 B a.

59-A

C O N T E N T S.

Legal Department File No. Succession /48.

Sr.No.	R.I./O.No-	Subject.	Pages.
		Opinions under the Indian Succession Act, 1925.	
1.	O.No.151/17-1-48.	Re:Transfer of deposit of deceased father to his son. Pl.see R.L. 's No.10043/13-11-48.	1 - 2
2-	O.No.6708/17-7-48.	Re: Payment of arrears of pension to daughter of First Princess of Burma.	3 - 4
3.	O.No.9814/19-9-48.	Sec.388. Re:Succession certificate issued by the Sawantenwadi State-Payment to be made on countersignature.	5 - 6
4.	O.No.10643/13-11-48.	Re: Transfer of deposit of deceased father to his son. (Pl. see R.L.A'sNo.151/17-1-48.)	7 - 8
5.	O.No.10245/30-10-48.	Questing regarding payment of rent in respect of a building to the son of the deceased owner of the building.	9 - 10.
6.	O.No.11060/24-11-48.	Re: Succession to the gadi in private property by a son of deceased Ruler.	11 - 12 ~~13 - 14.~~

F.S.N.28/5/50.

50.

27/5

K.S.R.

29/5

Office of the R.L.A.

Indian Succession Act.

Transfer of deposit of deceased father and his son.

It appears that the late Mr.Berwangi Gursetji Kias who had deposited a sum of Rs.200/- with the Government of Bombay died intestate leaving behind him a widow, two sons and two daughters of whom one son and one daughter are minors. Under section 50 of the Indian Succession Act, the estate of the deceased is to be divided among his widow and children, each of whom would get a certain share. Consequently, his son, Mr.B.N.Kias who seeks the transfer of the deposit to his name, would be entitled to 1/3rd share and the widow to 1/6th share. It follows therefore, that unless a succession certificate is obtained it would not be strictly legal to transfer the deposit of Rs.200/- to Mr.B.N.Kias. Since, however, the amount is small and the widow has no objection, the deposit may be transferred to Mr.B.N.Kias on taking an indemnity bond from him.

Sd/- P.N.Lad. 6/1/48.
Remembrancer of Legal Affairs.

U.R. to office of the Milk Commissioner, Bombay.
No.151 , dated the 7th January 1948.

E.K.N.28/5/56

40.

Office of the R.L.A.

Payment of arrears of pension to Tutoobai, daughter of First Princess of Burma.

The Kolaim being small, there would be no legal objection to paying the three days' pension to Tutoobai on taking an indemnity bond from her.

Sd/- P.M.Lad. 15/7

Remembrancer of Legal Affairs.

U.R. to P.& S.D., No.6705 dated the 17th July 1948.

E.K.N.28/5/56

40.

Off-ice of the R.L.A.

Succession certificate issued by the Sawantwadi State-payment to be made on countersignature.

Indian Succession Act,1925. Section 382.

It is doubtful whether the case would now be governed by section 382 of the Indian Succession Act. That section applies where a certificate in the form as nearly as circumstances admit of Schedule 8 has been granted to a resident within an Acceding State by a District Judge of that State,etc. It may be possible to argue that looking to the conditions of to-day, the certificate cannot be said to have been granted to a resident within an Acceding State inasmuch as he has now ceased to be such resident. On the other hand, it can be urged that at the time the certificate was granted, he was a resident in a foreign State. However, it is unnecessary, in my opinion, to pursue this controversy further; for the sum involved is quite small, viz., Rs.250 and there does not appear to be any dispute regarding the claimant's authority. In these circumstances, rather than require ~~than require~~ the holder of the certificate to get a fresh certificate, the payment may be made to him on taking from him a bond of indemnity with adequate security.

Sd/- P.M.Lad. 29/9

Remembrancer of Legal Affairs.

U.R. to P. and S.Department, No. 9814 dated the 29th September 1948.

B.R.N.28/5/56

40.

Office of the R.L.A.

Transfer of deposit.
R.L.A's opinion
No.151.dated
7-1-1948.

Condition 2 of the bond at p.33 ante makes it clear that the transfer of the deposit of Rs.200 is made to Mr. Romanshaw on his representation that the other heirs have agreed to such transfer. If this representation turns out to be false and the other heirs make a claim against Government for their share, Government can, under the bond, claim reimbursement from Mr.Romanshaw. Since it is small amount and the widow of the deceased Merwanji in whose name the deposit stands appears to have no objection to the transfer of the deposit to Mr.Romanshaw, there appears no objection to accepting the indemnity bond at p.33 ante and transferring the deposit to Mr.Romanshaw.

Sd/- P.L.Lad. 11/11

Remembrancer of Legal Affairs.

U.R. to Milk Comm.,No. 10643, dated 13-11-48.

E.K.N.28/5/56

40.

Office of the R.L.A.

Indian Succession Act,1925.

The contention of Mr.P.G.Patil is correct and no succession certificate would be necessary for the recovery of arrears of rent due for the period subsequent to the death of his father. There would be no legal objection to paying the rent to Mr.P.G.Patil on his executing a receipt as manager of the Joint family.

Sd/- P.M.Lad. 30\10

Remembrancer of Legal Affairs.

U.O. to H.& I.D., No.10245, dated the 30th October 1940.

E.I.H.28/5/40.

Office of the H.L.A.

It appears from the papers that the monies in some of the banking accounts are the property of the State and not of the Ruler personally. I understand that in other instances where such monies belonged to the State they were got transferred after the merger to Government account, of course, with the Ruler's consent. That same procedure may be followed in this case in respect of monies which are admitted to belong to the State. If there be any dispute under the terms of the agreement, it is to be settled by arbitration; and till then, the monies may remain in the accounts of the Banks and they may be informed accordingly.

2. It is only in cases where the monies are acknowledged to be the private property of the Ruler that the question of taking a certificate will arise. With respect, I must say that the Government of India's view that section 382 of the Indian Succession Act applies is not correct, and the further statement that the section is not in operation now is inaccurate. The fact that a Ruler has been accepted by the Government of India for succession to the gadi does not automatically entitle him to the whole of the private property left by his deceased father in India outside the State. It is conceivable that the Ruler may have made a will in respect of such property; and in any case there is every likelihood of there being other heirs entitled to a share in the property. It is, therefore, essential that a certificate should be obtained from the courts concerned in India in respect of such private property. I agree there is no reason why the Ruler should not approach the courts in India for that purpose.

Sd/-P.N.Lad.

Remembrancer of Legal Affairs.

U.O. to P.&S.D.No.11050, dated 24-11-48.